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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,386	06/07/2007	James K. Garland	TEAR AWAY WALL	7139
7590		02/13/2009	EXAMINER	
Terry M. Crellin			NELSON, MATTHEW M	
204 W. 330 North				
Laverkin, UT 84745			ART UNIT	PAPER NUMBER
			3732	
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			02/13/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/589,386	Applicant(s) GARLAND, JAMES K.
	Examiner Matthew M. Nelson	Art Unit 3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

Status

- 1) Responsive to communication(s) filed on 15 December 2008.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 15 August 2006 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-146/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Amendment filed on 12/15/2008 is acknowledged. Claims 1-8 remain pending.

Objections to the claims are withdrawn in light of the amendment.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Honstein et al. (2004/0166466).

3. Honstein shows a dental model tray (31) made entirely of a polymeric material ([0086], [0118]) comprising a substantially planar base (flat upper surface 59), a side wall (upper peripheral edge wall 33), and a thin, membrane-like connector member (dashed line in Fig. 1) extending continuously around the base formed integrally between the base and side wall being frangible so that the side wall may be torn away from the base ([0012]). With respect to claims 3-4, membrane-like connector member includes at least about four spaced apart thin tabs (frangible members 65; Fig. 1).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Honstein.
6. Honstein discloses the device as previously described above. Honstein also shows an ell-shaped member (at 74B in Fig. 2) comprising a first leg (at 75 in Fig. 2) and a second leg (at 85 in Fig. 2) in the shape of a flat strip disposed at an angle of 90 degrees relative to each other, a distal end of said first leg attached to said base in a plane parallel to the upper surface of said base (near 37 in Fig. 2), and an equivalent means for removably engaging the distal ends of second legs of respective ell-shaped members (cylindrical hinge pin 91A of hinge mechanism 32) so that they may pivot at the distal ends relative to each other (Fig. 2), but fails to show a width of about 3/8 inch to 5/8 inch and a thickness of about 3/64 inch to 5/64 inch. It would have been an obvious design choice to one having ordinary skill in the art at the time of invention to have selected the specified dimensions as it has not been disclosed that they serve any advantage or particular purpose, or solve a stated problem.
7. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honstein in view of Huffman (2002/0102514).

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8. Honstein discloses the device as previously described above, but fails to show means for removably attaching said distal end of said one leg to said base comprising a slide block formed at said distal end of said first leg, a back wall extending upwardly from said back side of said base, and an upwardly extending slot-like opening in said back wall that snugly receives the slide block in firm engagement.

9. Huffman teaches a slide block (articulator attachment tongue 74) formed at said distal end of said first leg (at 72 in Fig. 5), a back wall (articulator attachment bar 34) extending upwardly from said back side of said base, and an upwardly extending slot-like opening (articulator engagement slot 40) in said back wall that snugly receives the slide block in firm engagement ([0041]). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Honstein's device by including Huffman's means for removably attaching the first leg to the base in order to make use of disposable articulators.

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Honstein in view of Huffman as applied to claim 7 above, and further in view of McPherson (223,157).

11. Honstein/Huffman discloses the device as previously described above, but fails to show a stabilizer wall extending from the common juncture of first and second legs to a position that is spaced from the intersection of said block and said first leg.

12. McPherson teaches a stabilizer wall (fixed sharpened projections c) extending from the common juncture of first and second legs (at f in Fig. 1) to a position that is

spaced from the intersection of said block and said first leg (at c in Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Honstein/Huffman's device to include the stabilizer of McPherson in order to secure the models without interfering with the fitting of the teeth thereto.

Response to Arguments

13. Applicant's arguments filed 12/15/2008 have been fully considered but they are not persuasive.
14. Applicant argues that the perimeter of the base of the device cited by Honstein is attached permanently and integrally to the side walls and that there is absolutely no thin, membrane-like connector member that is formed integrally with the perimeter of the base and connects that perimeter to the lower side edge of the side wall. According to the original rejection, Examiner considered the base to be the flat upper surface 59 (not base wall 42 as applicant has seemed to have interpreted). The side walls were therefore considered to be the structure connected to the flat upper surface 59 by the membrane-like connector member (dashed line in Fig. 1). Applicant's claims never spell out the structure of the base or the side wall, therefore there is nothing in the claim to indicate that the side wall can't have a ledge as is present in Honstein.
15. Applicant's arguments in regards to claims 5-8 are that the additional art do not remedy the deficiencies of the Honstein reference. This has been addressed in view of the above.

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew M. Nelson whose telephone number is (571) 270-5898. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MMN/

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732